



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 30, 2003

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-4449

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183524.

The University of Texas Pan American (the "university") received a written request for an unredacted copy of an e-mail communication the university previously released to the current requestor in response to a prior records request. You now contend that the subject e-mail is not subject to the provisions of the Public Information Act (the "Act"). In the alternative, you argue that the redacted information in that e-mail is excepted from required disclosure pursuant to section 552.101 of the Government Code. You have additionally submitted to this office another e-mail communication, which you inform us was encompassed by the prior records request but was not released at that time. You also contend that this second e-mail communication is either not subject to the Act or is excepted from required public disclosure pursuant to section 552.101 of the Government Code. We have also received comments from representatives of the author of the e-mail communications. *See* Gov't Code § 552.304.

With regard to the second e-mail communication you submitted to this office, we note that you neither requested a decision from this office nor submitted the subject information to this office in a timely manner. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301(a), the information at issue is presumed public. Gov't Code

§ 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). Similarly, under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request, among other things, a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301(a) or 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). In this instance, however, because you contend that the e-mail communications at issue are not subject to the provisions of the Act, we will consider this threshold issue regarding both of the submitted e-mails together.

You characterize the submitted e-mail communications as being purely personal in nature. Chapter 552 of the Government Code is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You argue that the submitted e-mails were not collected, assembled, or maintained in connection with the transaction of any official business of the university, nor were they collected, assembled, or maintained pursuant to any law or ordinance. Based on your comments and our review of the e-mails at issue, we agree that these communications do not relate to the transaction of official university business and therefore do not constitute "public information" of the university. Consequently, the university is not required to disclose the two e-mail communications at issue under chapter 552 of the Government Code.¹ *Cf.* Open

¹Because we resolve your request under section 552.002(a), we need not address the applicability of section 552.101 of the Government Code.

Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/sdk

Ref: ID# 183524

Enc: Submitted documents

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